

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

FEBRUARY 20, 2003

A meeting of the New Hampshire Real Estate Commission was held on Thursday, February 20, 2003 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Acting Chairman MARTIN SMITH

Present: Commissioners MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, NANCY LeRoy, Executive Director BETH EMMONS, and Investigator ANN FLANAGAN.

- I. Motion by Commissioner IKAWA, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on December 17, 2002.

II. **APPOINTMENTS**

9:00 a.m. - Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
JOHN HAUSER	SMITH	APPROVED
D. WAYNE HINES	SMITH	APPROVED
KEN PERKES	SMITH	APPROVED

9:20 a.m. – JAMIE TUMBARELLO appeared before the Commission to explain a previous legal incident prior to applying for her salesperson's license. After review and discussion, and on motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission unanimously approved Ms. Tumbarello to apply for her salesperson's license.

9:35 a.m. – CAROLINE SANTAELLA appeared before the Commission to explain a "yes" answer to question #7 on her original salesperson's application. After review and discussion, and on motion by Commissioner LeRoy, seconded by Commissioner Ikawa, the Commission unanimously granted Ms. Santaella a salesperson's license.

9:43 a.m. – ROBERT CALKIN appeared before the Commission to explain a "yes" answer to question #7 on his original salesperson's application. After review and discussion, and on a motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission unanimously granted Mr. Calkin a salesperson's license.

9:50 a.m. – LAURIE DURACK appeared before the Commission to request an exception to RSA 331-A:18 – license lapsed past the 6 months from the expiration date. After review and

discussion, the Commission unanimously reinstated Ms. Durack's license.

9:55 a.m. – AMY CORRIVEAU appeared before the Commission to explain a recent legal incident. After review and discussion, and on motion by Commissioner Ikawa, seconded by Commissioner LeRoy, the Commission unanimously decided that this incident did not affect the status of Ms. Corriveau's real estate license.

10:00 a.m. – TERRISA JAMBOR appeared before the Commission to explain a previous legal incident prior to applying for an original salesperson's license. After review and discussion, and on motion by Commissioner Smith, seconded by Commissioner LeRoy, the Commission unanimously approved Ms. Jambor to apply for her salesperson's license.

10:30 a.m. – Acting Chairman SMITH had to leave the meeting. Prior to Commissioner Smith's departure, Commissioner HEATH was voted in as the Acting Chairman for the remainder of the meeting.

10:40 a.m. – THOMAS LANDRY and his attorney Brian C. Shaughnessy, appeared before the Commission to discuss the terms of a Settlement Agreement on File Nos. 11-1-96 and 3-2-97 New Hampshire Real Estate Commission v. Thomas P. Landry, which was entered into on September 19, 1997. After review and discussion, and on a motion by Commissioner LeRoy, seconded by Commissioner Ikawa, the Commission, present and voting, granted Mr. Landry a six month extension to appear before the Commission for a show cause hearing requesting reinstatement of his salesperson's license due to an ongoing disability.

III. DISCUSSION

FILE NO. 5-4-00 JANE WESCOMB & NEW HAMPSHIRE REAL ESTATE COMMISSION VS. ALLEN COLE AND CAROL ANDERSON. After receiving a notice of withdrawal of Complaint File No. 5-4-00 by the Complainant, Jane Wescomb, the Commission decided to grant the withdrawal, and re-evaluate the case to decide whether the Commission will pursue its complaint. Commissioner Heath to re-evaluate the complaint.

FILE NO. 2002-09-04 CRAIG LUGERBELL VS. RICHARD THACKSTON – the complainant submitted a request to withdraw Complaint File No. 2002-09-04, pending resolution of their differences. After review and discussion, the Commission tabled its decision until evidence of a resolution between the parties to the complaint is received.

IV. OTHER BUSINESS

1. Tuesday, March 18, 2003, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2002-07-02**

Evaluator: Commissioner HEATH

Determination: Should be heard, hearing to be scheduled.

(b) **FILE NO. 2002-07-03**

Evaluator: Commissioner HEATH

Determination: Should be heard, hearing to be scheduled.

The above determinations were unanimously approved.

3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

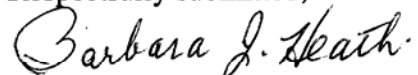
(1) FILE NO. 2001-07-02 NEW HAMPSHIRE REAL ESTATE COMMISSION & JOSEPH MOLICA AND DORI LYMAN VS LOUISA PAQUETTE & ROSELYN CAPLAN (CENTURY 21 HIGHVIEW REALTY, INC.)

(2) FILE NO. 2001-08-01 JUDITH THAYER VS MARSHA ROGERS, ROBERT PHILLIPS, ROSE MARIE PHILLIPS, ROBERT SCARPONIE, AND LINDA WHEELER (NORWOOD REAL ESTATE)

VIII. ADJOURNMENT

Motion by Commissioner IKAWA, seconded by Commissioner LeRoy to adjourn the meeting. Acting Chairman HEATH adjourned the meeting at 10:55 a.m.

Respectfully submitted,



BARBARA J. HEATH
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-07-02

NEW HAMPSHIRE REAL ESTATE COMMISSION

&

JOSEPH MOLLICA & DORI LYMAN

VS

LOUISA PAQUETTE & ROSELYN CAPLAN
(CENTURY 21 HIGHVIEW REALTY, INC.)

This matter comes before the Real Estate Commission on the complaint of Joseph Mollica & Dori Lyman, who allege violations of NH RSA 331-A:26 V and XXVIII by Louisa Paquette & Roselyn Caplan; and on the complaint of the New Hampshire Real Estate Commission through its Investigator Ann Flanagan, who alleges violations of NH RSA 331-A:13, II, NH RSA 331-A:26 VII and New Hampshire Code of Administrative Rules Rea 701.01 & 702.01(b) by Louisa Paquette & Roselyn Caplan. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Louisa Paquette was licensed as a real estate salesperson on 01 October 1990 and licensed as a real estate broker on 22 February 1994, and was so licensed and associated with Century 21 Highview Realty, Inc. at the time of the alleged violations.
2. Roselyn Caplan was licensed as a real estate salesperson on 05 October 1978 and licensed as a real estate broker on 24 April 1980, and was so licensed and the principal broker of record for Century 21 Highview Realty, Inc. at the time of the alleged violations.
3. Dori Lyman was licensed as a real estate salesperson on 07 August 1997 and licensed as a real estate broker on 13 March 2000, and was so licensed and the principal broker of record for Buyers Market Realty at the time of the alleged violations.
4. Dori Lyman was the buyer-agent for Joseph Mollica (hereinafter referred to as buyer) who entered into a Sales Agreement and Deposit Receipt contract to purchase a property from Carl Hankins (hereinafter referred to as seller) located at 170 Charlestown Road, Claremont, New Hampshire. Louis Paquette was the listing agent for Century 21 Highview Realty.
5. The Complainants allege that the principal broker of record for Century 21 Highview Realty, Roselyn Caplan should have put the escrow deposit into an interest-bearing account pursuant to the Sales Agreement and Deposit Receipt contract: "Deposit, receipt of which is hereby acknowledged, in the form of personal check with interest to

Buyer Is to be held in an escrow account by Century 21 Highview Realty in the sum of \$1,000.00 Additional deposit will be paid on or before 10 days of acceptance in the sum of \$9,000.00.”

6. Roselyn Caplan, in her formal notarized Form 11A response to the complaint, indicated that she was responsible to pay the interest on the deposit to the buyer but was not obligated to deposit the money into an interest-bearing account.

7. The buyer and seller became involved in a deposit dispute after the transaction fell apart. The buyer, Louisa Paquette, Rosclyn Caplan, and Dori Lyman all testified that they felt that the buyer withdrew from the transaction within the allowable time limits of the contract, but that the seller unreasonably asserted that the withdrawal date had been exceeded by the buyer.

8. The buyer testified that he hired an attorney to intervene in the deposit dispute, and ended up conceding \$1,500 of his deposit to the seller to avoid the cost of litigation.

9. Dori Lyman testified that respondents did not adequately communicate with their seller regarding the effective date of the contract.

10. The Real Estate Commission Investigator testified that if any of the three real estate agents involved in the transaction had been more careful to make sure that the initialed changes in the contract had been dated, then it could have avoided any confusion regarding the effective date of the contract.

11. The Real Estate Commission Investigator testified that Century 21 Highview Realty was using outdated Agency Disclosure Forms which did not meet the current requirements of Rea 701.01.

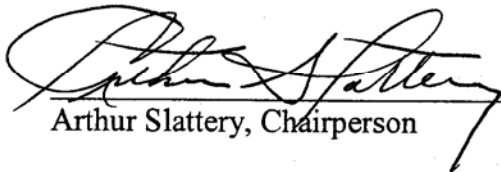
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The Commission feels that the provision on the Sales Agreement and Deposit Receipt contract: “Deposit, receipt of which is hereby acknowledged, in the form of personal check with interest to Buyer Is to be held in an escrow account by Century 21 Highview Realty in the sum of \$1,000.00 Additional deposit will be paid on or before 10 days of acceptance in the sum of \$9,000.00” was not clearly worded. Therefore, the Commission rules that respondents did not violate RSA 331-A:13, II, RSA 331-A:26, VII or Rea 702.01(b).

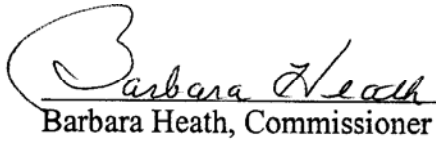
The Commission feels that it was just as much as the responsibility of the buyer-broker as the seller-brokers to make sure that the contract was worded properly and the initialed changes to the contract were dated. The Commission feels that there was insufficient evidence to conclude that respondents did not adequately communicate with their seller regarding the effective date of the contract. Therefore, the Commission rules that respondents did not violate RSA 331-A:26, V, or XXVIII.

In view of the foregoing rulings of law, the Real Estate Commission has determined that all the real estate agents involved in this transaction, complainant broker as well as respondent brokers, could have been more careful. However, the Commission does not feel that any of it rises to the level of violations or disciplinary action. The Commission is not pursuing the issue of the outdated Agency Disclosure Forms used by Century 21 Highview Realty, but is including the New Hampshire Real Estate Commission's most current form with this Order. Respondents may use this form or any other currently acceptable form.

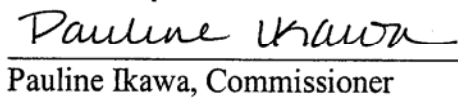
Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.


Arthur Slattery, Chairperson

1-17-03
DATE


Barbara Heath, Commissioner

1-18-03
DATE


Pauline Ikawa, Commissioner

1/16/03
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

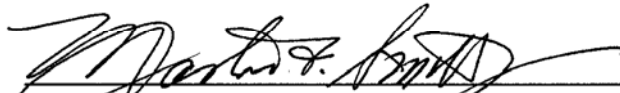
FILE NO. 2001-08-01

JUDITH THAYER

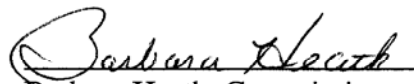
VS

MARSHA ROGERS, ROBERT PHILLIPS, ROSE MARIE PHILLIPS,
ROBERT SCARPONI, AND LINDA WHEELER
(NORWOOD REAL ESTATE)

Motion for Rehearing Denied. Petitioner has not provided any new evidence or grounds not considered by the Commission at the hearing on September 17, 2002. The Commission finds no good reason for a rehearing.


Martin F. Smith, Jr., Commissioner

1/15/03
DATE


Barbara Heath, Commissioner

1/18/03
DATE


Nancy LeRoy, Commissioner

1/23/03
DATE